In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

Nos. 483, 484

LAWRENCE SPEISER, *Appellant*, vs. JUSTIN A. RANDALL, as Assessor of Contra Costa County, State of California, *Appellee*.	No. 483
DANIEL PRINCE, *Appellant*, vs. CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, *Appellee*.	No. 484

Appeal from the Supreme Court of the State of California.

APPELLEES' PETITION FOR A REHEARING.

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Justin A. Randall, as Assessor of Contra Costa County, State of California, and the City and County of San Francisco, a municipal corporation, present this petition for a rehearing and, in support thereof, respectfully show:

I.

THE MAJORITY OPINION INADVERTENTLY MISCONSTRUES THE EFFECT OF THE DECLARATION OF NONADVOCACY.

The opinion of the Court treats the declaration of non-advocacy as merely "part of the probative process by which the State seeks to determine which taxpayers fall into the proscribed category". In these consolidated cases it is respectfully submitted that this assumption is not correct.

In the first place, in both the *Speiser* and *Prince* cases stipulations in the trial courts establish that each assessor denied the tax exemption "upon the sole ground" that the applications for veterans' property tax exemption did not contain the required declaration. (R. 20, para. 10 of stipulation, R. 48, para. 12.) In the *Speiser* case it was also further stipulated that the "applications disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran . . ." (R. 19, para. 8 of stipulation.)

Further, in the *Prince* case the record establishes that for the two years previous to the year in controversy Prince had applied for and been granted the veteran's exemption. (R. 46, para. 6 of stipulation.) Section 252 of the Revenue and Taxation Code of the State of California establishes that in a subsequent claim for a veteran's exemption filing of the affidavit by itself is sufficient without the requirement of other proof.[1]

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[1]California Revenue and Taxation Code §252:

"§252. When making the first claim any person claiming the veterans' exemption or the spouse of such person

The stipulations and statutory provisions discussed above make it clear that no other proof beside the affidavit was to be required of the veterans in the present cases. The reliance by the majority opinion on the fact that other proof would be required of these veterans is hence unjustified. The hypothesis of the Court that further proceedings would be undertaken by the assessors in these cases hence concerns a set of facts which are not presented by the record and which nowise are involved in the present controversy. It would seem inappropriate that the validity of such further proceedings be reviewed when they have never been undertaken and when their nature, scope and extent have not been the subject of review by any California court.

Cf. *United States v. Petrillo*, 332 U.S. 1, 11-12.

Hence, without knowing whether other procedures than the declarations involved in these cases would be required of the veterans involved, this Court has held the oath requirement inapplicable merely on the basis of such other procedures. Such determination of a constitutional question without any record or supporting facts is far beyond the usual scope of constitutional adjudication undertaken by this Court.

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shall appear before the assessor, shall give all information required and anwer all questions in an affidavit, and shall subscribe and swear to the affidavit before the assessor. The assessor may require other proof of the facts stated before allowing the exemption. In subsequent years the person claiming the veterans' exemption, or the spouse of such person, may file the affidavit by mail on such forms as the assessor shall require."

See particularly:

Walters v. St. Louis, 347 U.S. 231, 232-233 (no review as to hypothetical applications of state tax law);

Also see:

Alabama State Federation of Labor v. McAdory, 325 U.S. 450;

United Public Workers v. Mitchell, 330 U.S. 75.

The opinion of this Court is also unusual in that it gives no weight whatsoever to the probability that the State of California will utilize a fair procedure in any determination as to qualification for tax exemption (if any such further proceeding were required). When the Court states that "it is clear that the declaration may be accepted or rejected on the basis of incompetent information or no information at all", it does a grave injustice to the status of jural and administrative adjudication in the State of California and ignores the full review of administrative determinations available in California courts, generally and in tax cases. To assume error in State proceedings in advance of the inception of any such proceedings is also contrary to the prior case law of this Court.

Cf. *Garner v. Board of Public Works of Los Angeles,* 341 U.S. 716, 723-724.

II.

THE OPINION OF THE COURT IMPROPERLY IMPORTS STANDARDS APPLICABLE IN CRIMINAL PROSECUTIONS TO QUALIFICATION FOR CIVIL TAX BENEFITS UNDER STATE LAW.

It should first be observed that appellees, despite the statement of the majority opinion, did not and do not now contend that a privilege can be withheld on any condition, whether constitutional or unconstitutional. (Appellees' Consolidated Brief, page 31.) Such contention was not made either before the California Supreme Court or before this Court.

The nub of the matter is rather whether the State can impose conditions of qualification for civil tax benefits which are not given to citizens as a whole, particularly in regard to a benefit prompted by and given for reasons of patriotism and narrowly conditioned within itself to the end that nonadvocacy of violent overthrow be a prerequisite for such benefit. Qualification for such benefit is by oath or even by affirmation and, outside of the declaration itself, which is merely part of the general return required for a claim of tax exemption, no special procedures are required beyond those which are necessary to substantiate any claim of tax exemption. To confound administrative qualification for tax exemption in the manner customarily sanctioned under state law with the imposition of a criminal penalty for criminal conduct will have two evil results.

In the first place, well-developed state tax procedures for claiming of exemptions by the affirmative

action of the taxpayer are rendered inapplicable. In such proceedings it is well established that the general burden is on the taxpayer who claims a tax exemption.

See:

Chesney v. Byram, 15 Cal. 2d 460, 101 P. 2d 1106.

No good reason appears why a taxpayer cannot and should not include a declaration of nonadvocacy along with the affirmative statement already required under state law for a claim of tax exemption.

In the second place and still more basic is the observation that "an affirmation of minimal loyalty to the Government," which is all that is provided by the declaration in question, is not so irrelevant to the award of a subsidy to patriotism that it can be held to be unreasonable state action, particularly when limited to that speech which is beyond constitutional protection.

See:

American Communications Association v. Douds, 339 U.S. 382, 415.

Particularly is such a holding inappropriate when little or no weight has been given to the state determination as to the state purposes which motivate the grant of the tax exemption in question, particularly the intendment that the benefit be given as a reward for and incentive to patriotism.

Cf. *Hughes v. Superior Court of California,* 339 U.S. 460.

The holding that a state cannot impose a burden of proof on a taxpayer claiming exemption from general tax laws proceeds from the misconception that criminal standards of proof should apply and that such standards are inflexible. In the first place, there is no reason merely because certain conduct may also constitute a crime or because standards similar to criminal standards may be imported into state fiscal administration to hold that all the rules of criminal law including those regarding burden of proof and proof beyond reasonable doubt apply to civil or merely administrative proceedings. This Court has held in the past, without hesitation, that criminal punishment is not imposed by an oath more sweeping than the declaration at bar, which imposed standards of qualification and eligibility for all public employment.

See:

Garner v. Board of Public Works of Los Angeles, supra, 341 U.S. at 722.

Moreover, this Court has clearly held that "Civil procedure is incompatible with the accepted rules and constitutional guaranties governing the trial of criminal prosecutions, and where civil procedure is prescribed for the enforcement of remedial sanctions, those rules and guaranties do not apply".

Helvering v. Mitchell, 303 U.S. 391, 402, 403 (enumerating guaranties which are inapplicable, including burden of proof beyond a reasonable doubt).

More stringent standards ought not to be imposed on the states than are prescribed by the Federal Government for itself, particularly in a field reserved to the states for state action.

See:

Beauharnais v. Illinois, 343 U.S. 250.

In the second place, in the field of speech and likewise in the equally sensitive field of determination of the burden of proof in criminal prosecutions, this Court has directly held that states have the power to shift and alter the burden of proof.

See:

Beauharnais v. Illinois, supra, 343 U.S. at 265;
Leland v. Oregon, 343 U.S. 790, 798-799, distinguishing *Tot v. United States,* 319 U.S. 463.

From the above cases it is apparent that under the latitude given to a state for determination of its procedures, the procedure selected must "violate . . . generally accepted concepts of basic standards of justice" before it will be held invalid.

See:

Leland v. Oregon, supra, 343 U.S. at 799.

The requirement of a simple statement from a claimant for tax exemption certainly does not violate such standards.

Finally, it is equally inappropriate to hold that there is an attempt to regulate speech in this case different from those involved in *Garner v. Board of Public Works, supra, American Communications As-*

sociation v. Douds, supra; and *Gerende v. Board of Supervisors,* 341 U.S. 56. The inhibitions on advocacy of forcible overthrow in those cases were just as stringent, if not more so, and had exactly the same effect on speech as the standard prescribed in this case. There is no such basic difference between the broad classes of holders of public office and public employees and recipients of special tax benefits as stated in the majority opinion. In each case the question of public interest arises as to whether the particular purposes of a state are served by payment of the compensation or subsidy in question. In view of the fact that the problem of proof under the oaths in the cited cases is no different from that under the declaration in the case at bar, no basis can be perceived for the distinction made by this Court.

III.

DIFFICULT QUESTIONS ARE RAISED AND ARE LEFT UNSOLVED BY THE MAJORITY OPINION.

The opinion does not give a satisfactory answer on the question as to whether a declaration by oath or affirmation can be utilized at all, alone or in connection with a proceeding which may be found proper by this Court. Neither does the opinion consider whether information can be secured from the taxpayer which will assist the state in determining whether the mandate of the constitutional provision is being complied with as the condition for the grant of the tax exemption.

Furthermore, grave questions are raised as to the validity and the manner of enforcement of the constitutional provision. In view of pending and accumulating tax liabilities and the possible necessity for legislative action, these uncertainties produce unsatisfactory situations. Particularly is this true since the same constitutional provision governs the form of oath or affirmation utilized for public officers and employees in the State of California.

Cf. *Pockman v. Leonard,* 39 Cal. 2d 676, 249 P. 2d 257, appeal dismissed for want of a substantial federal question, 345 U.S. 962.

Since this controversy cannot be regarded as solved or completely adjudicated without answers to these questions, there is definite need for further clarification.

CONCLUSION.

The determination made by the majority opinion concerns proceedings by the assessors which have not been taken and which under the statutes and trial stipulations involved will not be taken in these cases. In doing so, it anticipates issues which were never before the state courts. The majority opinion applies inapplicable criminal concepts as to burden of proof. The majority opinion gives no weight to the determination of state policy of the purposes of tax exemption made by the people of California and considered by the State Supreme Court—that a tax exemption devoted to patriotism be conditioned so that

the granting of same be consistent with the high purpose for which it is given.

Furthermore, under the constitutional provision, further issues exist, which were presented to this Court and the solution of which is necessary for the final determination of the controversy and sound administration of the fiscal laws of the State of California.

It is respectfully urged that a rehearing should be granted to effect a complete and correct determination of the issues of these cases.

Dated, San Francisco, California,
July 23, 1958.

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Certificate of Counsel

I, Dion R. Holm, counsel for the above named petitioners, do hereby certify that the foregoing petition for rehearing of these causes is presented in good faith and not for delay.

Dated, San Francisco, California,
July 23, 1958.

Dion R. Holm.